Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

10 November 2022 *

(Reference for a preliminary ruling – Environment – Directive 92/43/EEC – Conservation of natural habitats and of wild fauna and flora – Article 6(3) – Assessment of a project likely to affect a protected site – Obligation to conduct an assessment – Continuation of the economic activity of an operation already authorised at the planning stage, under unchanged conditions, where authorisation has been granted following an incomplete assessment)

In Case C-278/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Østre Landsret (High Court of Eastern Denmark), made by decision of 8 February 2021, received at the Court on 28 April 2021, in the proceedings

Dansk Akvakultur, acting for AquaPri A/S,

v

Miljø- og Fødevareklagenævnet,

intervening parties:

Landbrug & Fødevarer,

THE COURT (Second Chamber),

composed of A. Prechal, President of the Chamber, M.L. Arastey Sahún, F. Biltgen, N. Wahl and J. Passer (Rapporteur), Judges,

Advocate General: J. Kokott,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 24 March 2022,

after considering the observations submitted on behalf of:

– Dansk Akvakultur, acting on behalf of AquaPri A/S, by K. Trenskow and M. Vindfelt, advokater,

* Language of the case: Danish.

– Miljø- og Fødevareklagenævnet, by E. Gabris, R. Holdgaard and B. Moll Bown, advokater,

– the European Commission, by C. Hermes and C. Vang, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 May 2022,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7, and corrigendum OJ 2014 L 95, p. 70).

2 The request has been made in the context of proceedings between the association Dansk Akvakultur, acting on behalf of AquaPri A/S, and the Miljø- og Fødevareklagenævnet (Environmental and Food Board of Appeals, Denmark) ('the Board of Appeal') concerning a decision refusing to authorise the continuation of the activity of a fish farming belonging to AquaPri.

Legal context

European Union law

3 The tenth recital in the preamble to Directive 92/43 states:

'Whereas an appropriate assessment must be made of any plan or programme likely to have a significant effect on the conservation objectives of a site which has been designated or is designated in future'.

4 Article 6(1) to (3) of that directive states:

'1. For special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types … and the species … present on the sites.

2. Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.

3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site … the competent national authorities shall agree to the plan or project only after

having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.'

Danish law

Law on environmental protection

5 The first sentence of Paragraph 33(1) of the Miljøbeskyttelsesloven (Law on environmental protection) of 22 December 2006, in the version applicable to the facts in the main proceedings, provides:

'Undertakings, plants or installations included in the list referred to in Paragraph 35 (activities subject to authorisation) may not be established or start operating before an authorisation has been issued.'

6 Paragraph 35 of that law states:

'The Minister for the Environment shall draw up a list of particularly polluting establishments, plants or installations which are subject to the authorisation requirement laid down in Paragraph 33.'

The Habitats Decree

7 The Habitatbekendtgørelsen (Bekendtgørelse nr. 188 om udpegning og administration af internationale naturbeskyttelsesområder samt beskyttelse af visse arter) (Decree No 188, on the designation and administration of international nature conservation areas and the protection of certain species) of 26 February 2016 provides, in Paragraph 6(1) and (2), which transposed into Danish law Article 6(3) of Directive 92/43:

'1. Before a decision is taken pursuant to the provisions referred to in Paragraph 7, an assessment shall be carried out to determine whether the project itself is likely, either individually or in combination with other plans and projects, to have a significant effect on a Natura 2000 site …

2. Where the authority considers that the project is likely to have a significant effect on a Natura 2000 site, a detailed impact assessment of the effects of the project on the Natura 2000 site shall be carried out having regard to the conservation objectives for the site concerned. If the impact assessment shows that the project would adversely affect the international nature protection area, no authorisation, derogation or approval may be granted to the applicant.'

8 Paragraph 7(7) of that decree states:

'The following procedures under the Law on environmental protection shall be subject to Paragraph 6:

…

(6) approval of establishments, etc. pursuant to Paragraph 33(1) of the Law on environmental protection …

…'

The Authorisation Decree

9 Paragraph 70(2) of the Godkendelsesbekendtgørelsen (Bekendtgørelse nr. 1458 om godkendelse af listevirksomhed) (Decree No 1458 on the approval of activities subject to authorisation) of 12 December 2017 ('the Authorisation Decree') states:

'Existing establishments covered by points I 203, I 205 … of Annex 2 which are not approved under Paragraph 33 of the Law on environmental protection shall submit applications for authorisation in accordance with the rules laid down in the present Decree by 15 March 2014 at the latest.'

10 Annex 2 to that decree includes, inter alia, points I 203 and I 205, which are worded as follows:

'I 203. Fish farms, that is to say livestock farming installations consisting of cages, wire boxes or the like placed in marine waters where the whole of the installation is situated less than one nautical mile from the coast and whose operation requires the use of animal feed.

…

I 205. Fish farms, that is to say livestock farming installations consisting of cages, wire boxes or the like placed in marine waters and situated wholly or partly more than one nautical mile from the coast and whose operation requires the use of animal feed.'

The background to the dispute and the questions referred

11 AquaPri is the owner of a fish farm situated in Småland's bay near to a Natura 2000 site hosting several types of terrestrial and aquatic habitats and several species of wild birds. That operation is engaged in the breeding of rainbow trout, which results in the emission or discharge into the environment of nitrogen, phosphorus, copper and antibiotics.

12 The project to install that operation on its current site was the subject of a permit granted on 15 February 1999.

13 In 2006, AquaPri requested authorisation to increase the quantity of nitrogen which could be emitted by its operation by a proportion of 0.87 tonnes, raising it from 15.6 tonnes to 16.47 tonnes.

14 The competent authority assessed whether such an increase was likely to have a significant effect on the Natura 2000 site located near that operation, on the basis of Danish legislation on the environmental impact assessment of public and private projects which was in force at that time. At the end of its assessment, it found that there were no natural habitats or species of wild birds sensitive to nitrogen within the site concerned and, therefore, likely to be significantly affected by the AquaPri project. It therefore authorised the Commission to put that project into effect by a decision which was adopted on 27 October 2006.

15 That decision was challenged before the relevant review body, which found that it was vitiated by a defect in that the competent authority had not taken account, in its assessment of the AquaPri project, of the existence of parallel projects consisting of increasing the quantities of nitrogen which could be emitted by three neighbouring fish farms. Nevertheless, that court considered that the defect did not justify annulment of that decision.

16 Since the same decision also required AquaPri to submit, by 15 March 2014 at the latest, an application for authorisation under Paragraphs 33 and 35 of the Law on environmental protection, as provided for in Paragraph 70(2) of the Authorisation Decree, the company made an application to that effect.

17 By decision of 16 December 2014, the competent authority granted the authorisation requested by AquaPri after noting, first, that the amount of nitrogen emitted by the operation belonging to it remained unchanged in relation to that authorised by the decision of 27 October 2006 and, second, that it was apparent from an assessment carried out after the adoption of that decision that that operation and the three neighbouring operations, considered in combination, were not likely to have a significant effect on the Natura 2000 site from which they are located.

18 The decision of 16 December 2014 was challenged before the Board of Appeal, which annulled it by decision of 13 March 2018.

19 In that decision, the Board of Appeal found, first of all, that the authorisation granted to AquaPri by the decision of 27 October 2006 had not been preceded by an assessment in accordance with the requirements of Article 6(3) of Directive 92/43, on the ground that that assessment had related to the individual impact of the project concerned, but not to the question whether that project, viewed in combination with the three neighbouring operations, was likely to have a significant effect on the Natura 2000 site near which those various operations are located.

20 Next, the Board of Appeal found that a national River Basin Management Plan applicable to the waters in the area concerned had been adopted for the period 2015-2021, following an assessment carried out in accordance with Article 6(3) of Directive 92/43, and that it followed in particular from that plan that the discharge of a total quantity of 43 tonnes of nitrogen had been authorised 'to ensure that existing fish farms … can make use of their present discharge authorisations'. However, it considered, in essence, that those findings did not affect the obligation on the competent authority, pursuant to Article 6(3) of Directive 92/43, to carry out a specific assessment of the operations belonging to AquaPri, in order to determine whether that project was likely to have a significant effect on the Natura 2000 site in the vicinity of which it is situated.

21 Lastly, the Board of Appeal took the view that the amount of nitrogen emitted by that operation, combined with those emitted by the three neighbouring operations, was likely to have a significant effect on the site in question.

22 AquaPri brought an action against that decision before the competent court, which itself forwarded the case to the referring court in the light of the questions raised in that case.

23 In its order for reference, the Østre Landsret (High Court of Eastern Denmark) states, in the first place, that the decision at issue in the main proceedings was adopted on the basis of the legislation transposing Article 6 of Directive 92/43 into Danish law, before noting that, even though that article does not specify the meaning of the term 'project' to which it refers, it follows from the case-law of the Court, in particular the judgments of 7 September 2004, *Waddenvereniging and Vogelbeschermingsvereniging* (C-127/02, EU:C:2004:482, paragraphs 24 to 26), and of 7 November 2018, *Coöperatie Mobilisation for the Environment and Others* (C-293/17 and C-294/17, EU:C:2018:882, paragraphs 66 and 82 to 83), that that term is broader than the concept of 'project' in Directive 2011/92/EU of the Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the

environment (OJ 2012 L 26, p. 1), as well as in Directive 85/337/EEC of the Council of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40), which preceded it.

24 In the second place, the referring court states, in essence, that the case-law of the Court on the term 'project', within the meaning of Article 6 of Directive 92/43, does not provide it with the interpretative guidance necessary to enable it to determine whether it is faced with such a project in the present case.

25 In that regard, it states, first, that the sole purpose of the application for authorisation which gave rise to the dispute in the main proceedings was to enable AquaPri to continue the activity of a fish-farming operation which had existed for approximately 15 years, under the same conditions as those in respect of which it had been granted prior authorisation. Second, that previous authorisation had been granted following an assessment which concerned, exclusively, the possible environmental impact of the project consisting of increasing the amount of nitrogen emitted by that operation and which therefore did not take account, in combination, of the existence of parallel and similar projects. Third, the combined environmental impact of those different operations had been, however, taken into account in the context of the assessment which had been since carried out, under Article 6 of Directive 92/43, with a view to authorising the National River Basin Management Plan referred to in paragraph 20 above.

26 In the light of all of the foregoing, the referring court asks whether, prior to the adoption of a decision on the application for authorisation which gave rise to the dispute in the main proceedings, a new assessment should have been carried out under Article 6(3) of Directive 92/43 and, if so, according to what procedures.

27 In those circumstances, the Østre Landsret (High Court of Eastern Denmark) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is [the first sentence of] Article 6(3) of Council Directive [92/43] to be interpreted as being applicable to a situation, such as that in the present case in which an authorisation is sought to continue operation of an existing fish farm, where the activity of the fish farm and the discharge of nitrogen and other nutrients remains unchanged in relation to the activity and discharge authorised in 2006, but where no assessment was made of the overall activity and the cumulative effects of all the fish farms in the area, the competent authorities having merely assessed the increase in the discharge of nitrogen and other substances from the fish farm concerned?

(2) Is the fact that the National River Basin Management Plan 2015-2021 takes account of the presence of the fish farms in the area, in so far as it sets aside a specific amount of nitrogen to ensure that the existing fish farms in the area can make use of their present discharge authorisations and that the actual discharge from the fish farms remains within the set limits, relevant, for the purposes of answering the first question?

(3) If, in a situation such as that in the present case, an assessment must be carried out pursuant to [the first sentence of] Article 6(3) of Directive [92/43], is the relevant authority required to take into account in such an assessment the limits on the discharge of nitrogen set aside in the River Basin Management Plan 2015-2021 and any other relevant information and assessments which might arise from the River Basin Management Plan or the Natura 2000 plan for the area?'

Consideration of the questions referred

The first question

28 By its first question, the referring court asks, in essence, whether the first sentence of Article 6(3) of Directive 92/43 must be interpreted as meaning that the continuation, under unchanged conditions, of the activity of an operation which has already been authorised at the planning stage must be subject to the assessment obligation laid down in that provision where, first, the assessment which preceded that authorisation related solely to the impact of that project considered individually, disregarding its combination with other projects, and second, that authorisation makes the continuation of that activity subject to a new authorisation provided or by national law.

29 In that regard, it should be noted, in the first place, that the first sentence of Article 6(3) of Directive 92/43 provides that any plan or project not directly connected with or necessary to the management of a Natura 2000 site, but likely to have a significant effect thereon, either individually or in combination with other plans or projects, is to be subject to an appropriate assessment of its implications for that site in view of its conservation objectives.

30 As is apparent from the very wording of that provision, the assessment obligation which it lays down does not apply only where a plan or project, considered individually, is likely to have a significant effect on a site to the management of which that plan or project is not directly connected or necessary. It also applies where it is the combination of that plan or project with other plans or projects which is likely to have a significant effect on the site concerned.

31 In either case, the plan or project in question must therefore be subject to an assessment of its implications for the site concerned, having regard to its conservation objectives.

32 That assessment must itself be 'appropriate', a requirement which implies that the competent national authority takes into consideration all the implications which the plan or project in question, considered individually or in combination with other plans or projects, is likely to have on the site concerned and, therefore, that that authority must identify and assess all aspects of that plan or project which may affect the conservation objectives of that site (see, to that effect, judgments of 14 January 2016, *Grüne Liga Sachsen and Others*, C-399/14, EU:C:2016:10, paragraph 49, and of 7 November 2018, *Holohan and Others*, C-461/17, EU:C:2018:883, paragraphs 33, 43 and 45).

33 That said, and as is also apparent from the wording of the first sentence of Article 6(3) of Directive 92/43, the assessment obligation laid down in that provision applies only in the presence of a plan or project.

34 As is apparent from the case-law of the Court on the term 'project', within the meaning of that provision, that concept is broader than that in Directives 85/337 and 2011/92, which refer to the existence of works or interventions involving alterations to the physical aspect of a site. That concept also encompasses other activities which, without being connected with or necessary to the management of a protected site, are likely to have a significant effect on that site (see, to that effect, judgment of 7 November 2018, *Coöperatie Mobilisation for the Environment and Others*, C-293/17 and C-294/17, EU:C:2018:882, paragraphs 61 to 68 and the case-law cited).

35 However, where an activity likely to have a significant effect on a protected site has already been authorised, at the planning stage, the continuation of that activity can be regarded as a new or separate project which must be made subject to a new assessment under the first sentence of Article 6(3) of Directive 92/43 only in the absence of continuity between the authorised activity and the continued activity, having regard in particular to the nature of those activities and to the location and conditions in which they are carried out (see, to that effect, judgments of 7 November 2018, *Coöperatie Mobilisation for the Environment and Others*, C-293/17 and C-294/17, EU:C:2018:882, paragraph 83, and of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, C-411/17, EU:C:2019:622, paragraphs 129 to 131).

36 In the event of the continuity of such an activity, its continuation must, in fact, be regarded as forming part of a single project which has already been authorised, and which does not need to be reassessed under the first sentence of Article 6(3) of Directive 92/43 (see, to that effect, judgments of 7 November 2018, *Coöperatie Mobilisation for the Environment and Others*, C-293/17 and C-294/17, EU:C:2018:882, paragraphs 78 and 79; of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, C-411/17, EU:C:2019:622, paragraph 128, and of 9 September 2020, *Friends of the Irish Environment*, C-254/19, EU:C:2020:680, paragraph 35).

37 In the present case, it follows from the clear and precise wording of the present question that the referring court asks the Court about the applicability of the first sentence of Article 6(3) of Directive 92/43 in a dispute concerning the continuation of the activity of an operation which has already been authorised at the planning stage, under conditions which are unchanged in relation to those in the light of which that authorisation had been granted. There does not therefore appear to be, from that point of view, a new or separate project which must be made subject to a new assessment under that provision, subject to verifications which it is for the referring court alone to carry out.

38 In the second place, it must nevertheless be observed that, since the Member States are required to comply with Article 6(3) of Directive 92/43 and, more specifically, the assessment obligation laid down in the first sentence of that provision, it cannot be accepted that a legal consequence may not be drawn from the infringement of that obligation in the event that such an infringement is found, in a final decision, by the competent national authority or court.

39 On the contrary, as the Court has stated with regard to the similar assessment obligation established by Directive 85/337, even where the authorisation of a project which has been adopted in breach of that obligation is definitive, that project cannot, however, be regarded as having been lawfully authorised with regard to that obligation, such that the Member State concerned is required, under the principle of sincere cooperation provided for in Article 4(3) TEU, to eliminate the unlawful consequences of the breach which it has committed by taking all measures necessary within the sphere of its competence to remedy it (see, to that effect, judgment of 12 November 2019, *Commission v Ireland (Derrybrien Wind Farm)*, C-261/18, EU:C:2019:955, paragraphs 71, 75, 80 and 90 and the case-law cited).

40 In particular, as the Advocate General noted, in essence, in points 29 and 30 of her Opinion, where a project has been authorised following an assessment which does not comply with the requirements of the first sentence of Article 6(3) of Directive 92/43, the competent national authority must carry out a subsequent review of the effects of the implementation of that project on the site concerned, on the basis of Article 6(2) of that directive, if that review constitutes the only appropriate measure for avoiding that implementation from leading to deterioration or

disturbance that could have had a significant effect on the site concerned. (see, to this effect, judgment of 14 January 2016, *Grüne Liga Sachsen and Others*, C-399/14 EU:C:2016:10, paragraph 46).

41 However, such a subsequent review, based on Article 6(2) of Directive 92/43, is not the only appropriate measure that the competent national authority may, in a situation such as that at issue in the main proceedings, be called upon to adopt.

42 In fact, as is apparent from the case-law of the Court, EU law does not preclude that authority from revoking or suspending the authorisation already granted in order to carry out a new assessment in accordance with the applicable requirements, provided that those measures take place within a reasonable period of time and that account is taken of the extent to which the person concerned may have been able to rely on the lawfulness of that authorisation, or even, in certain exceptional cases provided for by the applicable rules of national law, for the authority to regularise the situation, which must then not only comply with those requirements, but also take place under conditions which exclude any risk of circumvention or non-application of the rules of EU law (see, to that effect, judgment of 12 November 2019, *Commission v Ireland (Derrybrien Wind Farm)*, C-261/18, EU:C:2019:955, paragraphs 75 to 77 and 92 and the case-law cited).

43 Furthermore, where a Member State has provided, either in a measure of general scope, or in a measure of individual scope, that the continuation of an activity already authorised must be the subject of a new authorisation, the competent national authority is required to make that authorisation subject to a new assessment in accordance with the requirements of the first sentence of Article 6(3) of Directive 92/43, where it appears that that activity has not yet been the subject of such a compliant assessment, in which case that authority will have to draw all the factual and legal consequences which that new assessment entails in the context of the decision which it is called upon to adopt on any new authorisation to be granted.

44 However, in the present case, it is clear from the wording of the present question and from the statements of the referring court summarised in paragraph 16 above that the authorisation issued on 27 October 2006 provided that the continuation of the operation at issue in the main proceedings had to be the subject, by 15 March 2014 at the latest, of a new application for authorisation, such as that provided for in Article 70(2) of the Authorisation Decree.

45 It is also apparent from the statements of the referring court summarised in paragraphs 15 and 19 above that the assessment carried out during 2006 by the competent authority, prior to the consent referred to in the preceding paragraph, did not comply with the requirements of the first sentence of Article 6(3) of Directive 92/43 in that it related only to the individual impact of the project concerned and not to the impact of that project considered together with other projects.

46 In that regard, it is important to clarify that, whatever measure is used to erase the unlawful consequences of a breach of an assessment obligation such as that provided for in the first sentence of Article 6(3) of Directive 92/43, the Member State responsible for that breach may be held liable, if such a measure results in the revocation or amendment of the authorisation granted as a result of that breach, to make good any damage which its conduct may have caused to the economic operator who benefited from that authorisation, which is maintained in this case by AquaPri and which it is for the competent national court to verify.

47 In the light of all the foregoing considerations, the answer to the first question is that the first sentence of Article 6(3) of Directive 92/43 must be interpreted as meaning that the continuation, under unchanged conditions, of the activity of an operation which has already been authorised at the planning stage must not, in principle, be subject to the assessment obligation laid down in that provision. However, where, on the one hand, the assessment which preceded that authorisation related solely to the impact of that project considered individually, disregarding its combination with other projects, and, on the other hand, that authorisation makes such continuation subject to obtaining a new authorisation provided for by national law, the latter must be preceded by a new assessment in accordance with the requirements of that provision.

The second and third questions

48 By its second and third questions, which it is appropriate to deal with together, the referring court asks, in essence, whether the first sentence of Article 6(3) of Directive 92/43 must be interpreted as meaning that, in order to determine whether it is necessary to subject the continuation of the activity of an operation which has already been authorised at the planning stage following an assessment which does not comply with the requirements of that provision, to a new assessment in accordance with those requirements and, if so, in order to carry out that new assessment, account must be taken of assessments carried out in the meantime, such as those preceding the adoption of a National River Basin Management plan and a Natura 2000 plan covering, inter alia, the area in which the site likely to be affected by that activity is situated.

49 In that regard, it must be noted at the outset that, as follows from paragraphs 29 and 32 of the present judgment, any plan or project not directly connected with or necessary to the management of a site, but likely to have a significant effect thereon, must be subject to an appropriate assessment of its implications for that site, a requirement which involves identifying, assessing and taking into consideration all the implications of that plan or project for that site.

50 As is apparent from the settled case-law of the Court, such a plan or project must be made subject to such an assessment where there is a probability or a risk that it will have a significant effect on the site concerned, a condition which, in the light of the precautionary principle, must be regarded as being fulfilled where the existence of a probability or a risk of significant adverse effects on that site cannot be excluded on the basis of the best scientific knowledge in the field, taking account, in particular, of the characteristics and specific environmental conditions of that site (see, to that effect, judgments of 7 September 2004, *Waddenvereniging and Vogelbeschermingsvereniging*, C-127/02, EU:C:2004:482, paragraphs 43 to 45 and 49; of 17 April 2018, *Commission* v *Poland* (Białowieża Forest), C-441/17, EU:C:2018:255, paragraphs 111 to 113; and of 9 September 2020, *Friends of the Irish Environment*, C-254/19, EU:C:2020:680, paragraphs 50 and 51).

51 Furthermore, where the plan or project in question must be made subject to such an assessment, it can be regarded as appropriate only if the findings, assessments and conclusions which it contains are complete, precise and definitive, on the one hand, and if they are capable of removing all reasonable scientific doubt as to the effects of that plan or project on the site concerned, on the other hand (see, to that effect, judgments of 17 April 2018, *Commission v Poland (Białowieża Forest)*, C-441/17, EU:C:2018:255, paragraph 114, and of 9 September 2020, *Friends of the Irish Environment*, C-254/19, EU:C:2020:680, paragraph 53).

52 Lastly, in order to determine whether it is necessary to subject a plan or project to an assessment pursuant to the first sentence of Article 6(3) of Directive 92/43 and, if so, in order to carry out that assessment, it is necessary to take into account the assessments which may have been carried out

previously if those assessments are relevant and if the findings, assessments and conclusions contained therein are also complete, precise and definitive. However, the taking into account of those previous assessments cannot rule out the existence of a likelihood or risk of significant adverse effects of the plan or project at issue on the site concerned only in so far as the scientific and environmental data have not changed since they have been carried out, on the one hand, and that there are no other plans or projects which should be taken into consideration, but which might not have been taken into consideration, completely or not correctly, on the other hand (see, to that effect, judgment of 9 September 2020, *Friends of the Irish Environment*, C-254/19, EU:C:2020:680, paragraphs 54 to 56 and the case-law cited).

53 Indeed, it is at the date of adoption of a decision on the possible authorisation of the plan or project in question, in the light of the assessment carried out, that there must be no reasonable scientific doubt remaining as to the absence of a likelihood or risk of significant adverse effects on the site concerned (see, to that effect, judgment of 17 April 2018, *Commission v Poland (Białowieża Forest)*, C-441/17, EU:C:2018:255, paragraph 120).

54 Those principles can be transposed to the situation, referred to in paragraph 43 above, in which a Member State has provided, either in an act of general application or in an act of individual application, that the continuation of an activity already authorised at the planning stage must be the subject of a new authorisation.

55 Consequently, it is for the competent national authority to take account, both in determining whether that new authorisation must be preceded by a new assessment under the first sentence of Article 6(3) of Directive 92/43 and, if so, in order to carry out that new assessment, of assessments carried out previously if the latter are relevant and whether the findings, assessments and conclusions contained therein are complete, precise and definitive.

56 Nonetheless, the existence of such previous assessments does not in any way release the competent national authority from taking into consideration, for the purposes of its decision on the possible authorisation to be granted or in the context of the assessment which precedes it, all the factors existing at the date on which that decision and that assessment take place and, more specifically, all the implications which the implementation of the project to which they relate and of the activity arising therefrom may have had on the site concerned since the initial authorisation of that project, in the same way as if that authority were to carry out an *ex post facto* examination of that project under Article 6(2) of Directive 92/43 (see, to that effect, judgment of 14 January 2016, *Grüne Liga Sachsen and Others*, C-399/14, EU:C:2016:10, paragraphs 61 and 62).

57 In the present case, it is for the referring court alone to determine whether the previous assessments to which it refers in the present questions satisfy the requirements referred to in paragraph 55 above and, if so, what conclusions of fact and law should have or would have been drawn from them by the competent national authority for the purposes of authorising the continuation of the activity at issue in the main proceedings and, where necessary, from its prior assessment.

58 In the light of all the foregoing considerations, the answer to the second and third questions is that the first sentence of Article 6(3) of Directive 92/43 must be interpreted as meaning that, in order to determine whether it is necessary to subject the continuation of the activity of an operation which has already been authorised at the planning stage following an assessment which does not comply with the requirements of that provision to a new assessment in accordance with those requirements and, if so, in order to carry out that new assessment, account must be taken of the

assessments carried out in the meantime, such as those preceding the adoption of a National River Basin Management Plan and a Natura 2000 plan, covering, inter alia, the area in which the site likely to be affected by that activity is situated, if those earlier assessments are relevant and if the findings, assessments and conclusions contained therein are complete, accurate and definitive.

Costs

59 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

1. **The first sentence of Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora**

   must be interpreted as meaning that the continuation, under unchanged conditions, of the activity of an operation which has already been authorised at the planning stage must not, in principle, be subject to the assessment obligation laid down in that provision. However, where, on the one hand, the assessment which preceded that authorisation related solely to the impact of that project considered individually, disregarding its combination with other projects, and, on the other hand, that authorisation makes such continuation subject to obtaining a new authorisation provided for by national law, the latter must be preceded by a new assessment in accordance with the requirements of that provision.

2. **The first sentence of Article 6(3) of Directive 92/43**

   must be interpreted as meaning that, in order to determine whether it is necessary to subject the continuation of the activity of an operation which has already been authorised at the planning stage following an assessment which does not comply with the requirements of that provision to a new assessment in accordance with those requirements and, if so, in order to carry out that new assessment, account must be taken of the assessments carried out in the meantime, such as those preceding the adoption of a National River Basin Management Plan and a Natura 2000 plan, covering, inter alia, the area in which the site likely to be affected by that activity is situated, if those earlier assessments are relevant and if the findings, assessments and conclusions contained therein are complete, accurate and definitive.

[Signatures]